IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.987 OF 2006

United Towers Limited & ors. Petitioners
vs.
The Recovery Officer & anr. Respondents

Mr.Milind Vasudeo with Ms.Ranade i/b.Ms.Swati Palande
for the petitioners.

Mr.V.J.Shah i/b.M/s.Theba & Associates for the
respondent no.4.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 21st August, 2006

P.C.

The petitioners, by the present petition, have impugned the orders dated 6th January, 2003 and 11th November, 2003 passed by the respondent no.1 as also the orders dated 1st October, 2003 and 9th December, 2003 by respondent no.2 dismissing the petitioners appeals being appeal Nos.5/2003, 6/2003 and 34/2003. Similarly, the order dated 28th April, 2005 passed by the respondent no.3 in Appeal Nos.218/2003, 219/2003 and 6/2004.

2. A few facts may now be set out. Respondent no.4 had filed seven Original Applications before the Debt Recovery Tribunal. Consent terms came to be filed by which the petitioners agreed to pay to respondent no.4 a sum of Rs.7 crores out of which Rs.50 lacs were paid at

the time of filing consent terms. A recovery certificate was issued on 19th October, 2000. In execution of the said recovery certificate, attachment warrants were issued. A receiver came to be appointed on 6th August, 2002. A proclamation to sell was published on 24th December, 2003. The property has thereafter been sold to respondent no.5 who was the highest bidder in a sum of Rs.9 crores and a sale certificate has been issued in favour of respondent no.4.

3. From the records and the orders passed, it is clear that Shri V.B.Kapadia had valued the property for Rs.5,61,67,000/-. The Recovery Officer had fixed reserved bid of Rs.4 crores and AMD of Rs.50 lacs. The Receiver appointed had given public notice for sale which was published in Economic Times, Mumbai and Delhi on 2nd January, 2003 calling for offers by 10th January, 2003. Three offers were received. Respondent no.5 gave the highest bid of Rs.6 crores, but in open bidding, the same was increased to Rs.9 crores. The same was accepted by the Receiver. We have earlier referred to the various orders passed in the proceedings taken out on behalf of the petitioners herein.

4. The main challenge in these proceedings are about the valuation of the property. It was sought to be

submitted that the actual value of the property would be Rs.60 crores but the same has been sold for a paltry amount of Rs.9 crores. In Appeal Nos.5/2003 and 6/2003 we find that the learned Presiding Officer has considered that question and noted that in the mediation proceedings between the owners of the property, it was sought to be contended that the property was valued at Rs.30 crores. The claim of the petitioners herein was to the tune of 50% of the property. Thereafter in the Appeals preferred before the Debt Recovery Appellate Tribunal (DRAT) on behalf of the petitioners herein, it was contended by their counsel that they were not pressing the point of not having right, title and interest in the property and that they only have development rights on the property. It was, however, once again re-iterated that the Recovery Officer had no territorial jurisdiction to execute the recovery certificate as the properties were situated outside the jurisdiction of DRT, Mumbai. At this stage, we may mention that the petitioners had approached the Supreme Court for transfer of the proceedings to DRT, Delhi on the ground that the property was situated in New Delhi,. The SLP was dismissed. As such that point has not now been canvassed before us. Even otherwise considering the dismissal of the SLP it would not be open to canvass that point again. The learned Appellate Tribunal independently has dealt with the issue of transfer of

recovery certificate. After considering the law the learned Tribunal rejected the contention.

5. The main point that was urged was that the valuation of the property had not been done and the property was not sold by following procedure for public auction as was required to be done. The question is whether this Court ought to interfere with the order of sale of property in favour of respondent no.5. We may at once note that the property was valued by a valuer and an upset price was fixed. Offers were invited by issuing advertisements in the newspapers. Three offers were received. The petitioners were aware of the property being sold as it was by public auction and notices were issued by public advertisement. The petitioners did not produce or get any buyer to file their bids on the ground that the property was valued at Rs.60 crores. There were three bidders and out of them, respondent no.5 one of the bidders, in the open bid raised his bid to Rs.9 crores which was accepted. That amount is more than the valuation report given by Shri Kapadia. The money has been paid and the certificate issued in favour of the respondent no.5. The sale certificate was in fact issued on 24th December, 2003.

6. In our opinion, considering the fact that the valuer had given a valuation and an upset price has been fixed

by the recovery officer and thereafter advertisements were issued, it would clearly indicate that the property has fetched more than the price which the valuer had fixed. Nothing prevented the petitioners if their bids were bonafide to have approached the Recovery Officer or DRT or DRAT and deposit the entire amount before the sale certificate could be issued, if they had a genuine buyer who was willing to pay more than Rs.9 crores, in our opinion, the present proceedings are merely an afterthought only to prolong the proceedings.

7. In that light of the matter, we are clearly of the opinion that the impugned orders do not suffer from any error apparent on the face of the record warranting interference in the exercise of our extra-ordinary jurisdiction and, consequently, the petition is dismissed.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)